



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 240 OF 2015

CALEB OTIENO ONGERE.....1ST PLAINTIFF/APPLICANT

SPROSA ANANDA OCHOLI.....2ND PLAINTIFF/APPLICANT

WALTER OCHIENG OBWANA.....3RD PLAINTIFF/APPLICANT

- V E R S U S -

THORUNN HELGADOTTIR.....1ST DEFENDANT/RESPONDENT

SAMUEL LUSIRU GONA.....2ND DEFENDANT/RESPONDENT

FREDRICK RAMGRHIA.....3RD DEFENDANT/RESPONDENT

ELIJAH BRIAN ODERA.....4TH DEFENDANT/RESPONDENT

DOILINE ONKWARE.....5TH DEFENDANT/RESPONDENT

JAMES OLUNYA ODUOR.....6TH DEFENDANT/RESPONDENT

(The officials of ABC Children's Aid Kenya)

RULING

1) In the motion dated 16.8.2017 the plaintiffs sought for the following orders:

1. THAT the 1st, 2nd and 3rd plaintiffs be substituted with Ms. ABC Children's Aid International as plaintiff.

2. THAT the costs of this application be provided for.

2) The motion is supported by the affidavit of Caleb Otieno Ongere. When served with the motion, the defendants filed the replying affidavit of Thorunn Helgadottir to oppose the motion.

3) I have considered the grounds stated on the face of the motion and the facts deponed in the affidavits filed in support and against the application. I have also considered the rival oral submissions of learned counsels. It is the submission of the plaintiffs that M/s ABC Children's Aid International is the proper and rightful party in whom the right to the reliefs sought in this matter belong, hence it should be enjoined. It is further argued that the proposed plaintiff is seised with all the facts related to the subject

matter in question hence it is capable of prosecuting this suit. The applicants have stated that they do not have proper facts relevant to this suit and that they were forced to file this suit due to its urgency given that the proposed plaintiff is based in Iceland and was therefore absent at the time of filing and hearing of the initial application for injunction.

4) The applicants averred that the motion should be allowed in order to determine the real questions in dispute.

5) The defendants/respondents on the other hand have opposed the application arguing that the motion is an abuse of the court process, defective and incompetent. It is also pointed out that the applicants have failed to show whether the proposed plaintiff is a juristic person to have the *locus standi* to pursue this action. The respondents have further averred that the proposed plaintiff has no legal standing capable to sue nor maintain an action. The defendants also aver that they are officials of ABC Children's Aid Kenya duly registered in Kenya under the provisions of the Non Governmental Organisation Co-ordination Act, 1990 which organization is distinct from the proposed plaintiff. It is also pointed out that when ABC Children's Aid-Kenya amended its constitution thus the relationship between it and ABC Children's Aid International was severed. The defendants submitted that it will be legally untenable if the proposed plaintiff is allowed to assume and or be seized of a cause of action which does not concern it.

6) I have carefully considered the rival arguments and it has now become clear to me that the legal status of the proposed plaintiff has not been established to enable this court make the order to enjoin it as a party. This is a fundamental mistake which the applicants have failed to address this court. It was incumbent upon the applicants to establish the proposed plaintiff's locus standing therefore there is no justification for the application.

7) In the end the motion dated 16.8.2017 is ordered dismissed with costs to the respondents.

Dated, Signed and Delivered in open court this 26th day of January, 2018.

J. K. SERGON

JUDGE

In the presence of:

.....for the Plaintiff

..... for the Defendant